# **DISAPPROVAL OF DRAFT OU 2 RECORD OF DECISION**

03/09/95

USEPA DOE-FN 8 COMMENTS



### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION 5** 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF: 1

MAR O 8 1995

Mr. Jack R. Craig United States Department of Energy Feed Materials Production Center P.O. Box 398705 Cincinnati, Ohio 45239-8705

HRE-8J

RE: Disapproval of Draft OU 2 Record of Decision

Dear Mr. Craiq:

The United States Environmental Protection Agency (U.S. EPA) has completed its review of the United States Department of Energy's (U.S. DOE) Draft Operable Unit (OU) 2 Record of Decision (ROD). Although the ROD follows U.S. EPA quidance and is consistent with the Proposed Plan there are a few issues that must be resolved.

Specifically, the ROD must be changed, including the declaration, to reflect that the ROD is the document which constitutes the Comprehensive. Environmental Response, Compensation, and Liability Act (CERCLA) waiver. There is no other independent document which will contain the CÉRCLA waiver. Also. U.S. DOE has committed to adopting the OU 5 waste acceptance criteria of 1.030 parts per million total uranium in the OU 2 ROD. This change must be made and reflected in the document.

Therefore, U.S. EPA hereby disapproves the OU 2 ROD pending incorporation of acceptable responses to comments and associated changes in the ROD. A final copy of ROD with responses to comments must be submitted to U.S. EPA within thirty (30) days receipt of this letter.

Please contact me at (312) 886-0992 if you have any questions.

Sincerely,

James A. Saric

Remedial Project Manager

Technical Enforcement Section #1

RCRA Enforcement Branch

Enclosure

Tom Schneider, OEPA-SWDO cc: Jack Baublitz, U.S. DOE-HDQ Don Ofte, FERMCO Jim Thiesing, FERMCO

Terry Hagen, FERMCO

# TECHNICAL REVIEW OF THE "PROPOSED DRAFT RECORD OF DECISION FOR OPERABLE UNIT 2," FOR THE FERNALD ENVIRONMENTAL MANAGEMENT PROJECT FERNALD, OHIO

#### GENERAL COMMENTS

Commenting Organization: U.S. EPA Commentor: Saric Section #: NA Page #: NA Line #: NA

Original General Comment #: 1

Comment: The Operable Unit 2 (OU2) draft record of decision (ROD) adopts a waste acceptance criterion (WAC) of 1,080 parts per million (ppm) for total uranium and commits to lowering the WAC to be consistent with other operable units, if necessary. The OU5 WAC for total uranium has now been determined and is 1,030 ppm. The OU2 ROD should adopt the newly determined OU5 WAC for total uranium. This would require changes throughout the ROD wherever WAC are discussed and the addition of a full explanation for why a new WAC is being adopted Section 11 of the ROD.

Commenting Organization: U.S. EPA Commentor: Saric Section #: 10 Page #: NA Line #: NA

Original General Comment #: 2

Comment: Section 10 makes the statutory determinations for the selected remedy. Throughout Section 10, the selected remedy explanation uses the word "would." For instance, the phrases "would meet" and "would need" are used often.

Because the remedy is selected, the language in Section 10 should be changed to be more definitive about what the remedy will or will not do. Tentative language using the word "would" is appropriate for the PP, but is not appropriate for the ROD.

Commenting Organization: U.S. EPA Commentor: Saric Section #: NA Page #: NA Line #: NA

Original General Comment #: 3

Comment: Minor typographical and editorial errors were found in the ROD. The ROD should be reviewed and these errors should be corrected. The following are examples of the types of errors found:

Section 3, Page 3-3, Lines 15 and 16: This sentence contains an incomplete parenthetical phrase.

Table 9-1, Pages 9-4 and 0-5, Column 5: The column heading contains the misspelled word "Ceanup."

#### SPECIFIC COMMENTS

Commenting Organization: U.S. EPA Commentor: Saric Section #: Declaration Page #: D-2 Line #: 24 and 25

Original Specific Comment #: 1

Comment: Lines 24 and 25 state that the justification to waive the state disposal facility siting applicable or relevant and appropriate requirement (ARAR) was provided in the feasibility study (FS) report and the proposed plan (PP). This sentence should be revised to state that the justification for the waiver is summarized in the Decision Summary of the ROD and is fully supported by the Administrative Record for OU2. This change is necessary to revise the text to be stated in the present tense and to explain that the ROD also discusses the waiver.

Commenting Organization: U.S. EPA Commentor: Saric Section #: 9.2 Page #: 9-4 and 9-5 Line #: NA Original Specific Comment #: 2

Comment: Table 9-1 presents cleanup levels for OU2. The cleanup level for lead is not presented in this table. The cleanup level of 400 ppm for lead in soil should be added to Table 9-1.

Commenting Organization: U.S. EPA Commentor: Saric Section #: 10.2.1 Page #: 10-2 Line #: 11

Original Specific Comment #: 3

Comment: Section 10.2.1 discusses chemical-specific ARARs and cleanup levels. The acronym "PRLs" in Line 11 should be substituted with the words "cleanup levels." This ROD finalizes the preliminary remediation levels (PRL) presented in the FS and PP and so the previously established PRLs now become cleanup levels. In addition, the acronym "PRLs" is used other times in Section 10. Section 10 should be checked and the acronym "PRLs" should be replaced with the term "cleanup levels," as appropriate.

Commenting Organization: U.S. EPA Commentor: Saric Section #: 11 Page #: 11-1 Line #: NA

Original Specific Comment #: 4

Comment: Section 11 presents an explanation of any significant changes between the PP and the ROD. A full explanation of the rationale for changing the OU2 total uranium WAC from 1,080 to 1,030 ppm should be added to Section 11 (see General Comment I).

Commenting Organization: U.S. EPA Commentor: Saric Section #: Appendix A Page #: NA Line #: NA

Original Specific Comment #: 5

Comment: Appendix A presents ARARs and other criteria, guidance, or advisories to be considered (TBC) for the selected remedy. The cleanup level of 400 ppm for lead based on EPA's recent soil lead screening levels guidance is not presented in Appendix A. The cleanup level for lead in soil should be added as a chemical-specific TBC.

Commenting Organization: U.S. EPA Commentor: Saric Section #: Resp. Summ. Page #: RS-3-13 Line #: 18 - 31 Original Specific Comment #: 6

Comment: The text responds to a comment regarding the permanence of the on-site disposal facility. Commentors questioned whether on-site disposal could ever be considered to be permanent. Additional information should be added to the text to explain that, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), permanence is measured on a scale, from remedial actions that require long-term maintenance on the lower end of the scale (that is, less permanent) to remedial actions that permanently destroy contaminanats and require no long-term maintenance at the higher end of the scale. Providing a reference to the NCP and explaining the concept of permanence will strengthen the response.



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5 77 WEST JACKSON BOULEVARD CHICAGO, IL 60604-3590 MAR 0 2 1995

REPLY TO THE ATTENTION OF:

CM-29A

#### **MEMORANDUM**

SUBJECT: February 8, 1995, Draft Record of Decision

for Operable Unit 2

FROM:

Frian A. Barwick Assistant Regional Counsel

TO:

James A. Saric

Remedial Project Manager

Attached are the Office of Regional Counsel's comments on the draft Record of Decision (ROD) for Operable Unit Two at the Fernald Environmental Management Project (FEMP).

1. The draft ROD suggests that the United States Environmental Protection Agency's (U.S. EPA) concurrence with a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675, waiver of the Ohio siting criteria will be contained in some other independent document. However, pursuant to 40 C.F.R. § 300.430(f)(5)(ii)(C), the ROD must describe, among other things:

The applicable or relevant and appropriate requirements of other federal and state laws that the remedy will not meet, the waiver invoked, and the justification for invoking the waiver.

Therefore, all justification for the waiver must be included in the ROD and U.S. EPA's signing the ROD would constitute U.S. EPA's concurrence with the waiver. Throughout, the draft ROD must be revised to reflect that this document, and not some anticipated document, constitutes the CERCLA waiver.

While it is true, as the United States Department of Energy (U.S. DOE) states on page 8-10, that the responsiveness summary is a part of the ROD, U.S. EPA believes certain other parts of the draft ROD should also be clarified. In order to obtain U.S. EPA concurrence for the proposed waiver, U.S. DOE must make the following revisions to the draft ROD:

a. Page 9-1, Line 11: Because of the nature of the remedial wastes that will remain on-site, U.S. EPA considers continued Federal ownership of the FEMP to be a key element of the proposed remedial action. Any proposal to transfer ownership

to a non-Federal entity would be a significant change from the selected remedy and could not be consummated prior to completion of the ROD amendment procedures of 40 C.F.R. § 300.435(c)(2)(ii), including public notice and comment. Amendment of the ROD could only take place upon a demonstration that the requirements of Section 120(h) of CERCLA, 42 U.S.C. § 9620(h), have been satisfied and that such transfer will in no way undermine the integrity of any remedy selected for this Site. U.S. DOE must revise the ROD to explicitly acknowledge these restrictions.

- b. Page 9-2, Line 33: Insert an explanation that cost estimates are derived based upon conservative estimates of the volume of on-site remedial wastes only. During implementation, the disposal unit will be constructed in phases and carefully sized to accommodate only that volume of on-site remedial wastes actually generated. As a result, the actual size and cost of the disposal unit may be smaller and lower than estimated and there will be no excess disposal capacity for any other wastes, including off-site wastes. Creation of any excess capacity would, among other things, not be cost effective as is required by Section 121 of CERCLA, 42 U.S.C. § 9621.
- Page 10-5, Line 17: Insert an explanation that Section 3734.02(G) of the Ohio Revised Code allows the Director of the Ohio Environmental Protection Agency (OEPA) to grant an exemption to the siting criteria and that OEPA has issued quidance on such exemptions. OEPA maintains that its guidance allows exemptions to the siting criteria only in cases of certain geological conditions and that engineering controls cannot be used to supplement those conditions. Because the FEMP does not meet those geological conditions, U.S. EPA and DOE considered the waiver authority of of CERCLA, 42 U.S.C. § 9621(d)(4)(D), 121(d)(4)(D) determined, as explained in the following narrative, that the geological conditions at the FEMP, if supplemented by proven and reliable engineering controls, would attain a level of performance at least equivalent to that required by the State exemption guidance. Therefore, the selected remedy invokes the CERCLA waiver authority with respect to the State siting requirements.
- d. Page 10-5, Line 22: Add a sentence stating that the NCP explains that the purpose of this waiver is to allow for the use of alternative but equivalent technologies and that comparison based on risk is only permitted where the original standard is risk-based. The State exemption guidance, with its focus on existing geological conditions, is for the most part analogous to a technology standard but also appears to be, with respect to level of performance, risk and technology based. Therefore, the following analysis of each of the

CERCLA waiver criteria compares performance of the selected remedy with the State exemption guidance requirements in technological terms. Also included, for level of performance only, is a risk based analysis.

- U.S. EPA realizes that some of this information is contained elsewhere in the ROD (e.g., page 7-13) but believes it is necessary to comprehensively address this issue within Section 10.
- e. Page 10-8, Line 35: Replace "[n]ot applicable to this circumstance" with a statement that construction of the enhanced disposal unit would not take significantly longer than the time required for a disposal unit which merely meets the State's solid waste disposal unit requirements.
- f. Page 10-8, Line 39: Add an explanation that this waiver applies only to on-site remedial wastes and in no way to any other wastes. Because the CERCLA exemption (see 40 C.F.R. § 300.400(e)) from Federal, State, and local permit requirements applies only to on-site remedial waste, treatment, storage, or disposal of any off-site waste at the FEMP would be an activity subject to Federal, State, and local permitting requirements. Such requirements generally include public notice and comment procedures.
- 2. Page 5-1, Line 21: To assist the reader, U.S. EPA suggests moving the explanation in Section 6.1.1. concerning how constituents of concern are determined to this page or at least here cross-referencing Section 6.1.1.
- 3. RS-3-13, Comment a: U.S. EPA agrees with the apparent U.S. DOE conclusion that a two mile buffer zone is not necessary for protection of human health and the environment. However, the U.S. DOE response does not address the commentor's request.
- 4. RS-3-36, Response c: U.S. EPA wants to expand upon the U.S. DOE response to this comment by saying that the primary enforcement vehicle for the ROD is the 1991 Amended Consent Agreement which requires U.S. DOE to implement, subject to U.S. EPA approval, remedial design and remedial action (RD/RA). The 1991 Amended Consent Agreement includes provisions for stipulated penalties in the event of U.S. DOE non-compliance with RD/RA requirements. Non-compliance would include failure by U.S. DOE to implement the remedy selected in the ROD. In addition, Section 310(a)(1) of CERCLA, 42 U.S.C. § 9659(a)(1), affords persons the right, under certain circumstances, to take civil action to enforce the terms of the 1991 Amended Consent Agreement.